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October 24, 2006

CERTIFIED MAIL – Return Receipt Requested

Mr. Marc Moran
Regional Director
New York State Department
of Environmental Conservation
21 South Putt Corners Road
New Paltz, New York 12561

Re: Lands of Louis and Janet Nowicki
SBL # 57-1-88.22
Town of New Windsor, Orange County

Dear Mr. Moran:

This office represents Albert Fini, Jr. with respect to his application to the Town of New Windsor Planning Board for the subdivision of the above referenced property. I am in receipt of a letter dated September 7, 2006 from Douglas Gaugler, Conservation Biologist in your department, wherein he has determined that certain Freshwater Wetlands delineated on a survey of the property as regulated by the US Army Corps of Engineers (ACOE) should be treated as NYSDEC Freshwater Wetlands, even though they do not appear on the NYSDEC freshwater wetlands regulatory maps. A copy of the letter is enclosed for your reference.

Mr. Gaugler suggests in his letter that after walking the property with Mr. Fini's surveyor on August 3, 2006, "adjustment to the boundary as shown on the survey was needed." To the extent that comment applied to the portion of the property shown on the survey as mapped as DEC Wetlands, it is appropriate. However, to the extent the comment was directed to the ACOE Wetlands shown on the survey, it is not appropriate. Nor is the proposed map note contained in the letter, which effectively restricts the property as "mapped" DEC

Wetlands, without a readjustment to the DEC maps required by ECL § 24-0301(6).

The effect of Mr. Gaugler's letter is to classify a portion of the property as DEC Wetlands that has never previously mapped as such. This cannot be characterized as an attempt to "readjust" the maps or to correct an "error" in the original mapping that would be permitted under ECL § 24-0301(6). Nor is this an attempt to delineate "more precisely the boundary or lines" of a mapped DEC Wetland area, pursuant to ECL § 24-0301(7).

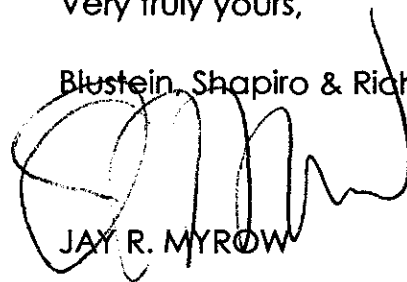
The applicable provisions of the Environmental Conservation Law and its promulgated regulations set forth in detail the procedural requirements for the delineation and mapping of DEC Wetlands. The survey submitted to Mr. Gaugler sets forth those wetlands on the property. The required map note and notice to the Town of New Windsor Planning Board that the ACOE Wetlands must be treated as DEC Wetlands for the purpose of this proposed subdivision is beyond the jurisdiction and authority of the DEC, and ignores the processes and procedures required by law to bring lands within the jurisdiction of the DEC pursuant to the NYS Freshwater Wetlands Act.

Based on the foregoing, Mr. Gaugler and the DEC have acted arbitrarily, capriciously and without authority of law by the actions taken in the September 7, 2006 letter. Such action constitutes an unconstitutional taking of property by the State without compensation and due process of law.

It is hereby demanded that the September 7, 2006 letter be amended to withdraw the map note requirement therein, and be modified to confirm the boundaries of the DEC Freshwater Wetlands shown on the survey referred to therein. Please provide a copy of the amended letter to my attention and the Town of New Windsor Planning Board within 10 days of the date of this letter so that my client may move forward with his subdivision application.

Very truly yours,

Blustein, Shapiro & Rich, LLP



JAY R. MYROW

cc. Mr. Albert Fini
Mr. John Taroli, PLS
Mr. Dennis Caplicki, Esq.
Town of New Windsor Planning Board